

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**GARY KLUSTY,**

**Petitioner,**

**v.**

**WARDEN, WARREN  
CORRECTIONAL INSTITUTION,**

**Respondent.**

**CASE NO. 2:17-CV-62**

**Chief Judge Algenon L. Marbley**

**Magistrate Judge Michael R. Merz**

**ORDER**

On May 3, 2019, the Magistrate Judge issued a Report and Recommendation (“First R&R”) recommending that the Court dismiss Petitioner’s petition for a writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 12.) Because no timely objections were filed, the Court adopted and affirmed the First R&R on May 23, 2019. (ECF No. 13.) Petitioner, via new counsel, subsequently moved the Court to re-open judgment pursuant to Fed. R. Civ. P. 60(b) (ECF Nos. 15, 17) and to accept and consider Petitioner’s untimely objections (ECF No. 15–2). On October 10, 2019, the Magistrate Judge issued a second Report and Recommendation (“Second R&R”) recommending that Petitioner’s motion to reopen judgment be granted given that Petitioner’s objections were untimely due to excusable neglect. (ECF No. 20.)

Although the parties were advised of the right to file objections to the Second R&R, and of the consequences of failing to do so, none has been filed. Accordingly, the Second R&R is **ADOPTED** and **AFFIRMED**. (ECF No. 20.) Petitioner’s motion to reopen is **GRANTED**. (ECF No. 17.) The Court **VACATES** its May 23, 2019, Order (ECF No. 13) adopting the First

R&R (ECF No. 12), and this matter is recommitted to the Magistrate Judge in light of  
Petitioner's objections (ECF No. 15–2).

**IT IS SO ORDERED.**

s/Algenon L. Marbley  
**ALGENON L. MARBLEY**  
**CHIEF UNITED STATES DISTRICT JUDGE**

**DATE: January 7, 2020**